

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MALIBU TEXTILES, INC.,

Index No: 07 CV 4780 (SAS)

Plaintiff,

Judge Scheindlin

-against-

CAROL ANDERSON, INC., and CABI, LLC,

Defendant.

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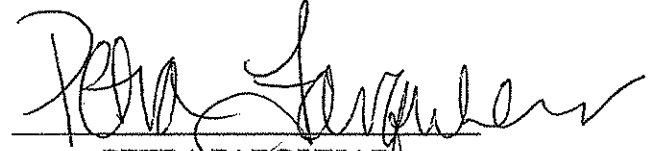
AFFIDAVIT OF PETRA FARQUHAR

I, Petra Farquhar, being duly sworn, deposes and says:


1. I am presently, and during the period in question, a designer at Carol Anderson, Inc. and/or CABI, LLC ("CABI").
2. I have been with CABI since approximately October 8, 2001.
3. In my capacity as a designer, I both design the garments and sample the fabrics to be used in the designs.
4. CABI admits having seen production yardage and/or sample yardage from Malibu Textiles, Inc. ("Plaintiff") of each of the three (3) fabrics in question.
5. With respect to Pattern # 1967 and Pattern # 2351¹, CABI saw numerous sample floral lace patterns in the market place and was unaware of Plaintiff's alleged copyrights on Plaintiff's floral lace patterns when CABI determined to purchase the floral laces from a source other than Plaintiff. For examples see Exhibit A attached hereto.
6. With respect to Pattern # 1307 (see Exhibit B hereto), CABI at the time of CABI's production of garments incorporating the alleged similar design, had learned of Plaintiff's infringement claims with respect to Pattern # 1967 and Pattern # 2351.

¹ For the purpose of convenience, the Pattern reference numbers are Plaintiff's Pattern numbers, not Cabi Style numbers.

7. CABI attempted to change the design of Pattern # 1307 so as to avoid a further infringement allegation.
8. CABI did not willfully infringe any of the Malibu items.


PETRA FARQUHAR

Sworn to me this 12 day of May, 2008


NOTARY PUBLIC

